

HOUSE No. 1117

By Ms. Peisch of Wellesley, petition of Alice Hanlon Peisch and others relative to regulating MCAS testing of children with disabilities. Education.

The Commonwealth of Massachusetts

PETITION OF:

Alice Hanlon Peisch	David Paul Linsky
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In the Year Two Thousand and Five.

AN ACT TO PROMOTE GREATER FAIRNESS, ACCOUNTABILITY AND PUBLIC
CONFIDENCE IN THE MCAS.

*Be it enacted by the Senate and House of Representatives in General
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of Chapter 69 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 inserting at the beginning the following new paragraphs:—
4 Except as otherwise provided or used in this chapter, the
5 following words shall, unless the context otherwise requires, have
6 the following meaning:
7 ‘Children with disabilities’ shall be defined as it is used in
8 Chapter 71B of the General Laws and section 504 of the Rehabili-
9 tation Act of 1973, 29 USC 794, and regulations promulgated
10 thereunder.
11 ‘MCAS’ means the ‘Massachusetts Comprehensive Assessment
12 System’ tests.

13 ‘Supported languages’ means any of those language groups
14 other than English for which an English learners program estab-
15 lished under chapter 71A is offered somewhere in the state at
16 some grade level, and where the language in question is used as
17 one of the primary languages of instruction for English learners in
18 such programs.

19 ‘Students whose performance is difficult to assess using con-
20 ventional methods’ means any student whose academic compe-
21 tency, as determined by the competency determination in
22 Section 1D of this chapter, cannot be accurately determined by a
23 standardized assessment instrument created pursuant to
24 Section 1D or 1I of this Chapter. This definition shall include, but
25 shall not be limited to the following:

- 26 a) all ‘English learners’ (as defined in Chapter 71A,
27 Section 2);
- 28 b) all children with disabilities; and
- 29 c) any child who, in the informed opinion of either the prin-
30 cipal of that child’s school or the Commissioner of Education, is
31 difficult to assess using conventional methods.

1 SECTION 2. Section 1D of Chapter 69, as so appearing, is
2 hereby amended in line 72, subsection “(i)” by adding at the end
3 thereof the following:—

4 No competency determination shall be withheld from any stu-
5 dent whose performance is difficult to assess using conventional
6 methods based on his performance on assessments utilizing such
7 conventional methods if that student has passed all his local grad-
8 uation requirements and was not offered such accommodations
9 during the administration of his assessments as are required under
10 federal law or are otherwise available to the student under this
11 Chapter. Further, no competency determination shall be withheld
12 from any English learner based on his performance on assess-
13 ments utilizing conventional methods in any subject other than
14 English language arts if that student has passed all his local gradu-
15 ation requirements and was not offered those assessments in the
16 language which best allows him to demonstrate educational
17 achievement and mastery of academic standards and curriculum
18 frameworks established under Sections 1D and 1E of this Chapter.

1 SECTION 3. Section 1I of Chapter 69, as so appearing, is
2 hereby amended by striking the fourth paragraph and inserting in
3 place thereof the following new paragraph:—

4 The assessment instruments shall be designed to avoid gender,
5 cultural, ethnic or racial stereotypes and shall recognize sensi-
6 tivity to different learning styles and impediments to learning. The
7 system shall take into account on a nondiscriminatory basis the
8 cultural and language diversity of students in the commonwealth
9 and the particular circumstances of students with special needs.
10 Said system shall comply with federal requirements for accommo-
11 dating children with special needs. In order to guarantee the con-
12 tent validity of the assessments provided by the assessment
13 instruments and to comply with the accommodations required for
14 English learners under the federal ‘No Child Left Behind’ Act,
15 except for assessments of competency or mastery of English lan-
16 guage arts, those English learners (as defined in Chapter 71,
17 Section 2) that are from a supported language group shall be
18 allowed opportunities for assessment of their performance in the
19 language which best allows them to demonstrate educational
20 achievement and mastery of academic standards and curriculum
21 frameworks established under Sections 1D and 1E of this Chapter,
22 provided that no student shall be tested with the assessment
23 instruments in a language other than English for longer than 3
24 consecutive years. Such opportunities shall not be limited merely
25 to assessing students for the competency determination described
26 in Section 1D of this Chapter, but shall be made available to Eng-
27 lish learners periodically throughout their school career to allow
28 the Department of Education to assess these students and their
29 English learners programs. Other than for assessments of English
30 language arts, a student’s assessment in his competency and mas-
31 tery of the academic standards and curriculum frameworks shall
32 be based upon his best results to date, regardless of the language
33 used for such assessment. Regardless of how long a student has
34 been in the Massachusetts public schools, if he is an English
35 learner or was formerly classified as an English learner then he
36 shall be entitled to use, except for exams in English language arts,
37 a translation dictionary, provided that said dictionary may not
38 actually define any word, but merely lists a word-for-word trans-
39 lation of each term from English to the child’s native language

40 and vice versa. In subjects other than English language arts, for
41 those English learners who do not speak a supported language, the
42 Department shall provide for other reasonable accommodations as
43 are practicable to allow for the accurate assessment of these chil-
44 dren.

1 SECTION 4. Section 1I of said chapter is hereby further
2 amended in line 246 by deleting the word “and” at the end of sub-
3 section “(i)”, in line 251 by deleting the final period in item “(j)”,
4 and inserting, after item “(j)” the following:—
5 “; and
6 (k) a list of supported languages, as defined by Chapter 69,
7 Section 1.

1 SECTION 5. Section 1I of said chapter is hereby further
2 amended by adding at the end thereof the following new para-
3 graphs:—
4 The report shall also include, but not be limited to the
5 following:
6 a) the costs the Department incurred during the previous fiscal
7 year for the development and administration of assessments in
8 supported languages;
9 b) estimates of costs the Department will likely incur during the
10 then current fiscal year regarding the development and administra-
11 tion of assessments in supported languages;
12 c) statewide data and district data, subcategorized by type of
13 English learners program, showing competency determinations
14 granted to students who are either currently English learners or
15 who were formerly English learners;
16 d) statewide data and district data, subcategorized by students’
17 native languages, showing competency determinations granted to
18 students who are either currently English learners or who were
19 formerly English learners;
20 e) statewide data and district data, subcategorized by type of
21 English learners program, showing MCAS performance of stu-
22 dents who are either currently English learners or who were for-
23 merly English learners;

24 f) statewide data and district data, subcategorized by students'
25 native languages, showing MCAS performance of students who
26 are either currently English learners or who were formerly English
27 learners;

28 g) statewide data and district data, showing the total number of
29 MCAS performance appeals requested, the number of MCAS per-
30 formance appeals accepted into the appeals process, and the
31 number of competency determinations that were granted as the
32 result of the MCAS performance appeals process, all data subcate-
33 gorized by the race and gender of students, by English learner
34 status, by former English learner status, and by children with dis-
35 abilities status; and

36 h) statewide data and district data, showing the total number of
37 applications for entry into the MCAS performance appeals
38 process that were rejected, summarized by reason for rejection,
39 and further subcategorized by the race and gender of students, by
40 English learner status, by former English learner status, and by
41 children with disabilities status.

42 Notwithstanding any general or special law to the contrary, the
43 board of education shall take such action to modify the process
44 governing the MCAS performance appeals established by 603
45 CMR 30.05 for students whose performance is difficult to assess
46 using conventional methods, as defined in Section 1 of this
47 Chapter.

48 The performance appeals process shall provide that any student
49 whose performance is difficult to assess using conventional
50 methods shall be eligible for an MCAS performance appeal if the
51 following criteria are met:

52 (a) in each subject area required by the board of education for
53 the competency determination the child has done one of the
54 following:

55 (i) the child submitted a portfolio assessment through the
56 MCAS Alternative Assessment at least 2 times without being
57 granted a competency determination;

58 (ii) the child took the grade 10 MCAS and passed the test; or,

59 (iii) the child took the grade 10 MCAS test 3 times without
60 achieving a passing score;

61 (b) the child has maintained an adequate attendance level as
62 established by the Department of Education, provided that such

63 attendance level shall be no higher than that required for students
64 in the child's district who are not seeking an MCAS performance
65 appeal, or else the child's days of absences from school in excess
66 of the number allowed by the Department are excused; and

67 (c) the child has demonstrated participation in academic sup-
68 port services made available and accessible by or approved by the
69 school district under an individual student success plan or under
70 any other plan designed to strengthen the student's knowledge and
71 skills in the subjects at issue, or the child's lack of participation in
72 available academic support services has been related to the child's
73 disability, for children with disabilities, or to his limited English
74 proficiency, for English learners as defined in Chapter 71A,
75 Section 2.

76 As provided in said regulations, the Commissioner of Educa-
77 tion may, for good cause, waive any of the eligibility criteria upon
78 the written request of the superintendent of the school district of
79 the child for whom a performance appeal has been or is being
80 filed.

81 The regulations shall require that, at the request of the child's
82 parent or guardian or the student who has reached the age of
83 majority, the superintendent of schools or his designee for the
84 school district in which the student is enrolled shall file an appeal
85 on behalf of that student whose performance is difficult to assess
86 using conventional methods provided that the student meets the
87 eligibility criteria set forth above. The superintendent may initiate
88 an appeal for a student whose performance is difficult to assess
89 using conventional methods with the consent of the parent,
90 guardian or student who has reached the age of majority, if the
91 student meets the eligibility criteria set forth above. The superin-
92 tendent may submit any written comments or evidence relevant to
93 the appeal. Denial of an earlier appeal shall not prevent a new
94 appeal under this section.

95 The regulations shall require that the superintendent include in
96 the performance appeal evidence of the child's knowledge and
97 skills in the subject at issue, including:

98 (1) documentation that the child has met the local graduation
99 criteria established by the local school committee;

100 (2) a recommendation from at least 1 of the student's teachers
101 in the area of appeal, assessing the level of the student's knowl-
102 edge and skills in the subject area at issue;

103 (3) where possible, a meaningful comparison of the student
104 with a group of other students who passed the MCAS in the sub-
105 ject area of the student's appeal. In the event of an inability to
106 identify an appropriate set of students to enable a meaningful
107 comparison with other students, this clause shall be waived and
108 the superintendent may submit a portfolio of the student's work in
109 the area of the appeal, as specified by the commissioner, sufficient
110 to demonstrate whether the student's knowledge and skills meet or
111 exceed the performance level established by the board of educa-
112 tion for the competency determination if the portfolio has been
113 maintained by the school district;

114 (4) for children with disabilities, documentation that the child's
115 individual education plan team, if any, with the approval of a
116 parent or guardian of the child, supports the graduation of the stu-
117 dent;

118 (5) for children with disabilities, any additional information
119 that the student's individual education plan team, if any, with the
120 approval of the student's parent or guardian, requests the superin-
121 tendent to submit indicating that the child's knowledge and skill
122 in the subject area of the appeal meets or exceeds the performance
123 level established by the board of education for the competency
124 determination and that the child's MCAS scores do not accurately
125 measure the student's abilities; and

126 (6) other supporting information relevant to the determination
127 as to whether the student's knowledge and skills in the subject
128 area of the appeal meet or exceed the performance level estab-
129 lished by the board of education for the competency determina-
130 tion, which may include work samples, scores of the child on
131 other standardized tests in the subject area of the appeal, evidence
132 of acceptance to college courses, or other evidence of academic
133 achievement which demonstrates that the child meets the compe-
134 tency determination standard.

135 For children with disabilities, any documentation of an indi-
136 vidual education plan team submitted in connection with an
137 MCAS performance appeal shall not constitute a modification of
138 the child's individual education plan under 34 C.F.R. 300.347 and
139 is therefore not appealable to the Bureau of Special Education
140 Appeals pursuant to 34 C.F.R. 300.507(a) or chapter 71B of the
141 General Laws. Nothing herein shall limit or expand the rights of

142 children with disabilities available under said chapter 71B, IDEA
143 or Section 504 of the Rehabilitation Act of 1973.

144 The Commissioner of Education shall grant the appeal for a
145 student whose performance is difficult to assess using conven-
146 tional methods if there is a preponderance of evidence in the doc-
147 umentation provided in clause (1) to (6), inclusive, the first
148 paragraph and any other evidence submitted by the superintendent
149 that the child's knowledge and skills in the subject area of the
150 appeal meet or exceed the performance level established by the
151 Board of Education for the competency determination. The Com-
152 missioner shall provide notice of the results of the appeal and, in
153 the case of a denial, written findings, to the student, parents or
154 guardian and superintendent. The Commissioner's decision on this
155 appeal shall be final and shall not be subject to further review or
156 appeal to any other entity; except that the regulations shall permit
157 the superintendent to seek reconsideration from the Commis-
158 sioner.

159 The following requirements shall apply to any proposed raise in
160 the minimum passing score on a specific MCAS subject matter
161 test, normally intended to be administered at a specific grade
162 level:

163 No minimum passing score on a specific MCAS subject matter
164 test, normally designed to be administered at a specific grade
165 level, shall be raised unless 99% of all children in the state who
166 took the test during the previous year have passed the test, and at
167 least 90% of students who took the test have scored a 'proficient'
168 rating or better; and

169 No minimum passing score on a specific MCAS subject matter
170 test, normally designed to be administered at a specific grade
171 level, shall be raised unless there is no district in the state that had
172 fewer than 90% of the children in that district pass the test during
173 the previous year, and unless there is no district that had fewer
174 than 80% of the children who took the test and who scored a 'pro-
175 ficient' rating or better; and

176 The score on a specific subject matter test, normally designed
177 to be administered at a specific grade level, may be raised by no
178 more than the equivalent of 1 point on the then scaled scoring
179 system for the MCAS during a given academic year; and

180 Once a student takes any version of the MCAS as part of his
181 competency determination, as described in Section 1D of this
182 Chapter, the minimum passing score for that student shall never
183 be raised on subsequent retests and administrations of a test in that
184 subject area for the remainder of that student's time in the public
185 schools even if the minimum passing score has been raised for
186 other children; and

187 Before raising the minimum passing score on a specific MCAS
188 subject matter test, normally designed to be administered at a spe-
189 cific grade level, the Department must make statistically sound
190 projections on the impact of any such minimum passing score
191 increase, and the Department may not implement such a score
192 increase if it is projected that the increase will result in a drop in
193 the pass rates on that test during its next administration of 1% or
194 more statewide or of 1% or more in any school district in the
195 state.

196 The Department of Education must publish annually, at a min-
197 imum on the Department's website, data regarding the number of
198 students in 12th grade in each school, each school district and
199 statewide who have received a competency determination. Said
200 publication must also include the following additional data for
201 each school and each school district and for the state as a whole:

202 the total number of students in each school, each school dis-
203 trict, and statewide, who were enrolled in the Massachusetts
204 public schools in the 8th grade, even if they subsequently trans-
205 ferred or dropped out; and

206 the number of those students who went on to graduate from the
207 Massachusetts public schools within 4 years; and

208 the number of those students who subsequently transferred, to
209 the best knowledge of the Department, to other schools, noting
210 whether such a transfer was to another public school within the
211 same district, another school within a different district in Massa-
212 chusetts, a private school in Massachusetts, or to a school outside
213 of Massachusetts;

214 the number of those students who dropped out of school at any
215 time between the 8th grade and the 12th grade; and

216 the total number of students who were not enrolled in the
217 Massachusetts public schools in the 8th grade but who have sub-
218 sequently enrolled in the Massachusetts public schools.

219 No school in the Commonwealth shall solely consider MCAS
220 scores for any decision regarding the retention of a student in a
221 grade. The Department shall publish annually, at a minimum on
222 the Department's website, data regarding student retention rates,
223 measured in absolute numbers and as a percentage of students
224 enrolled at a given grade level, for all grades, at each school, and
225 aggregated further for each school district, and for the state as a
226 whole.